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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 8th March, 1978:—

BILL No. 22 OF 1978

A Bill to provide for the acquisition and transfer of the undertakings of Hindustan Tractors Limited, Vishwamitri, Vadodara, for the purpose of ensuring the continuity of production of goods which are vital to meet the needs of the general public and for matters connected therewith or incidental thereto.

WHEREAS Hindustan Tractors Limited, Vishwamitri, Vadodara, are engaged in the manufacture and distribution of tractors which are vital to meet the needs of the general public;

AND WHEREAS the management of the undertakings of Hindustan Tractors Limited was conducted in a manner highly detrimental to the public interest and had suffered heavy losses;

AND WHEREAS the management of the undertakings of Hindustan Tractors Limited was taken over by the Central Government under section 18A of the Industries (Development and Regulation) Act, 1951;

65 of 1951.

AND WHEREAS it is necessary to acquire the undertakings of Hindustan Tractors Limited to ensure the continuance of the production of goods which are vital to meet the needs of the general public;

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short
title and
commen-
cement.

1. (1) This Act may be called the Hindustan Tractors Limited (Acquisition and Transfer of Undertakings) Act, 1978.

(2) It shall come into force on the 1st day of April, 1978.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) “appointed day” means the 1st day of April, 1978;

(b) “Authorised Controller” means the Gujarat Agro Industries Corporation Limited, Ahmedabad, which took over the management of the undertakings of the Company by virtue of the Order of the Government of India in the Ministry of Industrial Development No. S.O. 137(E)/18A/IDRA/73, dated the 12th March, 1973, made under clause (b) of sub-section (1) of section 18A of the Industries (Development and Regulation) Act, 1951;

65 of 1951.

(c) “bank” means—

(i) the State Bank of India constituted under the State Bank of India Act, 1955;

23 of 1955.

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;

38 of 1959.

(iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

5 of 1970.

(iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;

2 of 1934.

(d) “Commissioner” means the Commissioner of Payments appointed under section 16;

(e) “Company” means Hindustan Tractors Limited, being a company as defined in the Companies Act, 1956, and having its registered office at Vishwamitri, Vadodara;

1 of 1956.

(f) “Custodian” means the Custodian appointed under sub-section (3) of section 10 to take over, or carry on, the management of the undertakings of the Company;

(g) “date of taking over” means the date on which the management of the undertakings of the Company was taken over by the Authorised Controller;

(h) “Government company” has the meaning assigned to it by section 617 of the Companies Act, 1956;

1 of 1956.

(i) “notification” means a notification published in the Official Gazette;

(j) “prescribed” means prescribed by rules made under this Act;

(k) "specified date" means such date as the Central Government may, for the purpose of any provision of this Act, by notification, specify and different dates may be specified for different provisions of this Act;

(l) "State Government" means the State Government of Gujarat;

(m) words and expressions used herein and not defined but defined in the Companies Act, 1956, shall have the meanings, respectively, assigned to them in that Act.

1 of 1956.

CHAPTER II

ACQUISITION AND TRANSFER OF THE UNDERTAKINGS OF THE COMPANY

3. On the appointed day, the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, shall, by virtue of this Act, stand transferred to, and shall vest in, the Central Government

Transfer to and vesting in the Central Government of the undertakings of the Company.

4. (1) The undertakings of the Company referred to in section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges, and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, bank balances, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the Company, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall be deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

General effect of vesting.

(2) All property as aforesaid which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them, and any attachment, injunction, decree or order of any court, tribunal, officer or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn.

(3) Where any licence or other instrument in relation to the undertakings of the Company had been granted at any time before the appointed day, to the Company by the Central Government, a State Government or any other authority, the Central Government, the State Government of Gujarat or, as the case may be, the Government company, in which the right, title and interest of the Company in relation to its undertakings have vested under section 7, shall, on and from the appointed day, be deemed to be substituted in such licence or other instrument in place of the Company referred to therein as if such licence or other instrument had been granted to it and shall hold such licence or the undertakings or any part thereof specified in such other instrument for the remainder of the period for which the Company would have held such licence or undertakings or any part thereof under such other instrument.

(4) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property, shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(5) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (4) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amounts specified in section 8, and also out of the monies determined under section 9, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any matter specified in sub-section (2) of section 5 in respect of the undertakings of the Company instituted or preferred by or against the Company is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of the Company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the Central Government, or the State Government, or where the undertakings of the Company are directed, under section 7, to vest in a Government company, that Government company.

Company
to be
liable for
certain
prior
liabilities.

5. (1) Every liability other than the liability specified in sub-section (2), of the Company in respect of any period prior to the appointed day, shall be the liability of the Company and shall be enforceable against it and not against the Central Government, or the State Government, or where the undertakings of the Company are directed, under section 7, to vest in a Government company, against that Government company.

(2) Any liability arising in respect of—

(a) loans advanced by the Central Government or the State Government, or both, to the Company (together with interest due thereon), on or after the date of taking over;

(b) loans advanced by a bank to the Company (together with interest due thereon) on or after the date of taking over;

(c) loans advanced by the Industrial Reconstruction Corporation of India Limited to the Company (together with interest due thereon) on or after the date of taking over;

(d) wages, salaries and other dues of employees of the Company and the dues on account of any deduction made from wages and salaries and other dues of employees, relating to any period commencing on and from the date of taking over;

(e) any debt incurred by the Company during any period commencing on and from the date of taking over, not being a debt falling under clause (a), clause (b), clause (c) or clause (d) or specified in Category I of the Schedule;

shall, on and from the appointed day, be the liability of the Central Government, or the State Government, or the Government company aforesaid and shall be discharged by the Central Government or the State Government, or the Government company aforesaid as and when repayment of such loans becomes due or as and when such wages, salaries and other dues and debt become due and payable.

(3) For the removal of doubts, it is hereby declared that,—

(a) save as otherwise expressly provided in this section or in any other provision of this Act, no liability, including any liability arising out of any guarantee given by the State Government in respect of any loan or advance given to the Company but not including the liability specified in sub-section (2), of the Company in relation to its undertakings in respect of any period prior to the appointed day, shall be enforceable against the Central Government, or the State Government, or where the undertakings of the Company are directed, under section 7, to vest in a Government company, against that Government company;

(b) no award, decree or order of any court, tribunal, officer or other authority in relation to the undertakings of the Company, passed after the appointed day, in respect of any matter, claim or dispute, not being a matter, claim or dispute in relation to any matter referred to in sub-section (2), which arose before that day, shall be enforceable against the Central Government, or the State Government, or where the undertakings of the Company are directed, under section 7, to vest in a Government company, against that Government company;

(c) no liability incurred by the Company before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government, or the State Government, or where the undertakings of the Company are directed, under section 7, to vest in a Government company, against that Government company.

6. (1) Notwithstanding anything contained in sections 3 and 4, the Central Government shall, as soon as may be, after the commencement of this Act, direct, by notification, that the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, which have vested in the Central Government under section 3 and such of the liabilities of the Company as are specified in sub-section (2) of section 5, shall, instead of continuing to vest in the Central Government, vest in the State Government of Gujarat either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

Vesting
of the
under
takings
of the
Company
in the
State
Govern-
ment of
Gujarat.

(2) Where the right, title and interest of the Company in relation to its undertakings and the liabilities of the Company specified in sub-section (2) of section 5 vest in the State Government under sub-section (1), the State Government shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the State Government.

Power of
State
Govern-
ment
to direct
vesting
of the
under-
takings
of the
Company
in a
Govern-
ment
company.

16.7. (1) Notwithstanding anything contained in sections 3, 4 and 6, the State Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings and such of the liabilities of the Company as are specified in sub-section (2) of section 5, which have vested in the Central Government under section 3 and thereafter in the State Government under section 6 shall, instead of continuing to vest in the State Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) Where the right, title and interest, and the liabilities specified in sub-section (2) of section 5, of the Company in relation to its undertakings vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government or the State Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

CHAPTER III

PAYMENT OF AMOUNTS

Payment
of
amount.

8. For the transfer to, and vesting in, the Central Government, under section 3, of the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings, there shall be given by the Central Government to the Company, in cash, and in the manner specified in Chapter VI, an amount of rupees one hundred and fifty lakhs.

Payment
of further
amount.

9. (1) For the deprivation of the Company of the management of its undertakings, there shall be given to the Company by the Central Government an amount calculated at the rate of rupees fifty thousand per annum for the period commencing on the date of taking over and ending on the appointed day.

(2) The amount specified in section 8 and the amount determined under sub-section (1) shall carry simple interest at the rate of four per cent. per annum for the period commencing on the appointed day and ending on the date on which payment of such amounts is made by the Central Government to the Commissioner.

(3) The amounts determined in accordance with the provisions of sub-sections (1) and (2) shall be given by the Central Government to the Company in addition to the amount specified in section 8.

CHAPTER IV

MANAGEMENT, ETC., OF THE UNDERTAKINGS OF THE COMPANY

10. (1) The State Government in which the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings vested under section 6 shall be entitled to exercise all such powers and do all such things as the Company is authorised to exercise and do in relation to its undertakings.

Management, etc., of the undertakings of the Company.

(2) The general superintendence, direction, control and management of the affairs and business of the undertakings of the Company, the right, title and interest in relation to which have vested under section 3 in the Central Government and, under section 6, in the State Government, shall,—

(a) where a direction has been made by the State Government under sub-section (1) of section 7, vest in the Government company specified in such direction; or

(b) where no such direction has been made by the State Government, vest in one or more Custodians appointed under sub-section (3),

and thereupon the Government company so specified or the Custodian so appointed shall be entitled to exercise all such powers and do all such things as the Company is authorised to exercise and do in relation to its undertakings.

(3) The State Government may appoint one or more individuals or a Government company as the Custodian of the undertakings of the Company in relation to which no direction has been made by it under sub-section (1) of section 7.

11. (1) On the vesting of the management of the undertakings of the Company in the State Government under section 6, every person in whose possession or custody or under whose control any property referred to in sub-section (1) of section 4 may be, shall deliver the property to the State Government forthwith.

Duty to deliver possession of property acquired and documents relating thereto.

(2) Any person, who on the appointed day has in his possession or under his control any books, documents or other papers relating to the undertakings of the Company which has vested in the State Government under section 6 and which belong to the Company, or, would have so belonged if the undertakings of the Company had not vested in the State Government, shall be liable to account for the said books, documents or other papers to the State Government and shall deliver them up to the State Government.

(3) The State Government may take, or cause to be taken, all necessary steps for securing possession of all properties which have vested in that Government under this Act.

(4) The Central Government may issue such directions as it may deem desirable in the circumstances of the case to the State Government as to its powers and duties and the State Government may also, if it so desires, apply to the Central Government at any time for instructions as to the manner in which the management of the undertakings of the Company shall be conducted by it or in relation to any other matter arising in the course of such management.

(5) On the vesting of the management of the undertakings of the Company in a Government company or in the Custodian, the provisions of sub-sections (1) to (4) shall apply to, or in relation to, the Government company or the Custodian, as the case may be, as they apply to, or in relation to, the State Government, subject to the modification that the references to the State Government shall be construed as references to the Government company or the Custodian, as the case may be.

Accounts
to be
rendered
by the
Company
or any
other
person.

12. (1) Where, in pursuance of any decree, order or injunction of any court or otherwise,—

(a) the Authorised Controller was, after the date of taking over and before the appointed day; and

(b) the Central Government, the State Government, or the Government company, as the case may be, is on or after the appointed day,

prevented from taking over the management of any part of the undertakings of the Company, the Company, or any other person in possession, custody or control of such part, shall, within sixty days from the appointed day, render accounts to the State Government or the Government company in relation to the period commencing on the date of taking over and ending on the date on which such part was or is handed over to the Authorised Controller or, as the case may be, the Central Government, the State Government, or the Government company, with regard to the—

(i) assets and stores of the undertakings or any part thereof, acquired, utilised or sold during the said period; and

(ii) income derived by the Company or any other person from the undertakings or any part thereof during the said period.

(2) If, on examination of the accounts referred to in sub-section (1), any income or other moneys is or are found to have been derived by the Company or any other person from such undertakings or any part thereof during the period referred to in that sub-section or any other moneys are found to be payable, such income or other moneys shall be recoverable by the Central Government, the State Government or the Government company from the Company or such other person, as the case may be, and from the amount payable under this Act to the Company and the debt due to the Central Government, the State Government or the Government company on this account shall rank as an unsecured debt.

(3) If no account is rendered by the Company or such other person in respect of the undertakings or any part thereof within the period referred to in sub-section (1) or if the Central Government, the State Government or the Government company, as the case may be, has any reason to believe that the account rendered by the Company or such other person is incorrect or false in any material particular, the Central Government, the State Government or the Government company may refer the matter to the Commissioner and thereupon the Commissioner shall determine the income derived by the Company or such other person from such undertakings or any part thereof during the period referred to in sub-section (1) and take steps to recover the said income or other moneys from the Company or such other person and from the amount payable to the Company under this Act as if the debt due to the Central Government, the State Government or the Government company on this account were an unsecured debt.

(4) No mortgage, charge, lien or other encumbrance in relation to the undertakings of the Company or any part thereof shall be binding on the Central Government, the State Government or the Government company, if such mortgage, charge, lien or other encumbrance was created, at any time during the period in which the Authorised Controller was, and the Central Government, the State Government or the Government company, as the case may be, is, prevented, by any decree, order or injunction of any court or otherwise, from taking over the management of the undertakings or any part thereof.

1 of 1956.

13. The Custodian shall maintain accounts of the undertakings of the Company in accordance with the provisions of the Companies Act, 1956.

Accounts.

CHAPTER V

PROVISIONS RELATING TO THE EMPLOYEES OF THE COMPANY

14. (1) Every person who has been, immediately before the appointed day, employed in any of the undertakings of the Company shall become, on and from the appointed day or such later date, as the case may be, an employee of the State Government or, as the case may be, of the Government company in which the right, title and interest of the Company in relation to its undertakings, have vested under this Act, and shall hold office or service under the State Government, or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the State Government, or the Government company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the State Government, or by the Government company, as the case may be.

Employment of certain employees to continue.

14 of 1947

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other person employed in any of the undertakings of the Company to the State Government, or the Government company, shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(3) Where, under the terms of any contract of service or otherwise, any person, whose services become transferred to the State Government, or the Government company, by reason of the provisions of this Act, is entitled to any arrears of salary or wages or any payment for any leave not availed of or any other payment, not being payment by way of gratuity or pension, such person may, except to the extent of such liability which has been taken over by the Central Government or the State Government or the Government company under sub-section (2) of section 5, enforce his claim against the Company, by which he was employed immediately before such transfer but not against the Central Government, or the State Government, or the Government company.

15. Where moneys representing provident fund, superannuation fund, welfare fund or other fund for the benefit of the persons employed in any of the undertakings of the Company have vested in an authority established under any law for the time being in force, such moneys shall continue to vest in such authority for the benefit of the said persons.

Provident fund and other funds.

CHAPTER VI

COMMISSIONER OF PAYMENTS

Appoint-
ment of
Commis-
sioner of
Payments.

16. (1) The Central Government shall, for the purpose of disbursing the amounts payable to the Company under sections 8 and 9, by notification, appoint a Commissioner of Payments.

(2) The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India.

Payment
by the
Central
Govern-
ment to
the
Commis-
sioner.

17. (1) The Central Government shall, within thirty days from the specified date, pay, in cash, to the Commissioner, for payment to the Company—

(a) an amount equal to the amount specified in section 8, and

(b) an amount equal to the amount payable to the Company under section 9.

(2) A deposit account shall be opened by the Central Government in favour of the Commissioner, in the Public Account of India, and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account and thereafter the said deposit account shall be operated by the Commissioner.

(3) The interest accruing on the amounts standing to the credit of the deposit account referred to in sub-section (2) shall enure to the benefit of the Company.

Certain
powers
of the
Central
Govern-
ment or
State
Govern-
ment
or Gov-
ernment
company.

18. (1) The Central Government, or the State Government, or the Government company, as the case may be, shall be entitled to receive up to the specified date, to the exclusion of all other persons, any money due to the Company, in relation to its undertakings which have vested in the Central Government, or the State Government, or the Government company, realised after the appointed day notwithstanding that the realisation pertains to a period prior to the appointed day.

(2) The Central Government, or the State Government, or the Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by it after the appointed day for discharging any liability of the Company, not being any liability specified in sub-section (2) of section 5, in relation to any period prior to the appointed day; and every such claim shall have priority in accordance with the priorities attaching, under this Act, to the matter in relation to which such liability has been discharged by the Central Government, or the State Government, or the Government company.

(3) Save as otherwise provided in this Act, the liabilities of the Company in respect of any transaction prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the Company.

19. Every person having a claim against the Company shall prefer such claim before the Commissioner within thirty days from the specified date:

Claims to be made to the Commissioner.

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days and not thereafter.

20. The claims arising out of the matters specified in the Schedule shall have priorities in accordance with the following principles, namely:—

Priority of claims.

(a) Category I shall have precedence over all other Categories and Category II shall have precedence over Category III, and so on;

(b) the claims specified in each of the Categories, except Category III, shall rank equally and be paid in full, but, if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

(c) the liabilities specified in Category III shall be discharged, subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority, *inter se*, of such loans; and

(d) the question of discharging any liability with regard to a matter specified in a lower Category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher Category.

21. (1) On receipt of the claims made under section 19, the Commissioner shall arrange the claims in the order of priorities specified in the Schedule and examine the same in accordance with such order of priorities.

Examination of claims.

(2) If, on examination of the claims, the Commissioner is of opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower Category, he shall not be required to examine the claims in respect of such lower Category.

22. (1) After examining the claims with reference to the priorities set out in the Schedule, the Commissioner shall fix a date on or before which every claimant shall file the proof of his claim failing which he will be excluded from the benefit of the disbursement made by the Commissioner.

Admission or rejection of claims.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of a daily newspaper in the English language and in one issue of such daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the Company an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he will hold his sittings and shall, for the purpose of making an investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the issuing of any commission for the examination of witnesses.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the registered office of the Company is situated:

Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, the appeal shall lie to the High Court of Gujarat, and such appeal shall be heard and disposed of by not less than two Judges of that High Court.

Disburse-
ment of
amount
by the
Commis-
sioner to
clai-
mants.

23. After admitting a claim under this Act, the amount due in respect of such claim shall be paid by the Commissioner to the person or persons to whom such sums are due, and, on such payment, the liability of the Company in respect of such claim shall stand discharged.

Disburse-
ment of
amounts
to the
Company.

24. (1) If, out of the monies paid to him in relation to the undertakings of the Company, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the Company.

(2) Where the possession of any machinery, equipment or other property, has vested in the Central Government, or the State Government, or the Government company, under this Act, but such machinery, equipment or other property does not belong to the Company, it shall be lawful for the Central Government, or the State Government, or the Government company to continue to possess such machinery or equipment or other property on the same terms and conditions under which they were possessed by the Company immediately before the appointed day.

25. Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made shall be transferred by the Commissioner to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of the revenue.

Undisbursed or unclaimed amount to be deposited to the general revenue account. Assumption of liability

26. (1) Where any liability of the Company arising out of any item specified in Category I, Category II and Category III of the Schedule is not discharged fully by the Commissioner out of the amount paid to him under this Act, the Commissioner shall intimate in writing to the Central Government the extent of that liability which remains undischarged and that liability shall be assumed by the Central Government.

(2) On the vesting of the undertakings of the Company in the State Government or the Government company under this Act, the liability assumed by the Central Government under sub-section (1) shall be the liability of the State Government or the Government company, as the case may be.

CHAPTER VII

MISCELLANEOUS

27. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority.

Act to have overriding effect.

28. (1) Every contract entered into by the Company in relation to its undertakings before the date of taking over for any service, sale or supply, and in force immediately before the appointed day, shall, on and from the expiry of one hundred and eighty days from the appointed day, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing, by the Central Government, or the State Government, or the Government company, and, in ratifying such contract, the Central Government, the State Government, or the Government company, as the case may be, may make such alterations or modifications therein as it may think fit.

Provision relating to contracts.

(2) Every contract entered into by the Company or the Authorised Controller on behalf of the Company, in relation to its undertakings, on or after the date of taking over for any service, sale or supply and in force immediately before the appointed day shall remain in force, unless such contract is terminated or modified or altered by the Central Government, the State Government or the Government company, as the case may be, within a period of one hundred and eighty days from the appointed day.

(3) The Central Government, the State Government or the Government company, as the case may be, shall not refuse to ratify, terminate, modify or alter a contract under sub-section (1) or sub-section (2)—

(a) unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the undertakings of the Company; and

(b) except after giving to the parties to such contract a reasonable opportunity of being heard and recording in writing its reasons for refusal to ratify the contract or for terminating the contract or for making any alteration or modification therein.

Transfer
of
assets,
etc.,
to be
void in
certain
cases.

29. (1) Except with the prior approval of the Central Government, the State Government or the Government company, neither the Company nor any other person in possession of the undertakings of the Company or any part thereof the management or the possession of which could not be taken over by the Authorised Controller or the Central Government or the State Government or the Government company by reason of any decree, order or injunction of any court or otherwise shall, on and from the appointed day, transfer by sale, mortgage or otherwise any property or other assets forming part of the undertakings of the Company and any such transfer, without such prior approval, shall be void and inoperative.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

Protec-
tion of
action
taken
in good
faith.

30. (1) No suit, prosecution, or other legal proceeding shall lie against the Central Government or any officer of that Government, or the Custodian, or the State Government, or the Government company, or any officer of the State Government or the Government company or other person authorised by the Central Government, or the State Government, or the Government company, for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or any officer or other employee of that Government, or the State Government, or the Custodian or the Government company, or any officer or other employee of the State Government or of the Government company or other person authorised by the State Government, or the Government company, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

Penal-
ties.

31. Any person who,—

(a) having in his possession, custody or control any property forming part of any undertaking of the Company, wrongfully withholds such property from the Central Government, or the State Government, or the Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of any undertaking of the Company or wilfully withholds or fails to furnish to the Central Government, or the State Government, or the Government company, or any person or body of persons specified by that Government, or the State Government, or the Government company, any document relating to such undertaking which may be in his possession, custody or control or fails to deliver to the Central Government, or the State Government, or the Government company or any person or body of persons specified by the Central Government, or the State Government, or the Government company, any assets, books of account, registers or other documents in his possession, custody or control, relating to the undertaking of the Company; or

(c) wrongfully removes or destroys any property forming part of any undertaking of the Company or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

32. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences
by com-
panies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary, or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

33. (1) The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Act, other than the power conferred by section 34, may also be exercised by such person or persons as may be specified in the notification.

Delegation
of powers.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

Power of
Central
Govern-
ment to
make
rules.

34. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which, and the manner in which, an intimation shall be given to the Commissioner under sub-section (4) of section 4;

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
remove
difficul-
ties.

35. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

Declara-
tion as to
the
policy
of the
State.

36. It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of article 39 of the Constitution.

Explanation.—In this section, “State” has the same meaning as in article 12 of the Constitution.

THE SCHEDULE

(See sections 5, 20, 21, 22, 24 and 26)

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES OF THE COMPANY

PART A

*Post-take-over management period**Category I*

Loans advanced by the Gujarat Agro Industries Corporation for carrying on any trading or manufacturing operations.

PART B

*Pre-take-over management period**Category II*

Arrears in relation to the provident fund, salaries, wages and other amounts due to the employees of the Company.

Category III

Secured loans.

Category V

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a Local Authority or a State Electricity Board.

Category V

(i) Any credit availed of by the Company for the purpose of carrying on any trading or manufacturing operations.

(ii) Any other dues.

STATEMENT OF OBJECTS AND REASONS

Hindustan Tractors Limited, Vadodara, was a private company wholly owned by its nominees. For various reasons including mismanagement, the Company began to show steady decline in production and incurred heavy losses, facing imminent closure. After investigation into the affairs of this Company, the management of its undertakings was taken over by the Central Government on the 12th March, 1973, under the Industries (Development and Regulation) Act, 1951, and was entrusted to the Gujarat Agro-Industries Corporation being the Authorised Controller. The period of the management will expire on the 11th March, 1979. The Company is engaged in the manufacture of agricultural tractors. After the take over of the management of the undertakings of the Company, the production in the Company, which had come to a standstill in November, 1972, has progressively improved. The net losses have come down from the level of Rs. 80 lakhs for the year ending March, 1973 to Rs. 9 lakhs for the year ending March, 1977 and during 1977-78 they expect to achieve a nominal net profit of Rs. 1 lakh. After careful consideration of the whole matter and with a view to improving the technical and economic viability of the undertakings, the Central Government have decided to acquire the undertakings of the Company and vest them in the State Government of Gujarat.

2. At the time of take over of the management of the undertakings of the Company, it was clear that it was not possible for the Company to meet all its past dues. Accordingly, the Central Government issued an order on the 26th April, 1973, under section 18FB of the Industries (Development and Regulation) Act, 1951, suspending the operation of all the contracts, agreements, settlements, etc., in force immediately before the take over and also payment of the liabilities as on the date of the take over, excepting these relating to banks and financial institutions. The period of this order, which cannot exceed five years in aggregate, expires on the 25th April, 1978. Immediate action is, therefore, required to be taken to acquire the undertakings of the Company by legislation. It has, therefore, been decided to introduce a Bill in the current session of Parliament. The Bill seeks to acquire the undertakings of Hindustan Tractors Limited.

NEW DELHI;

GEORGE FERNANDES.

The 25th February, 1978.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 5 (55)/76-AEI(II), dated the 22nd February, 1978 from Shri George Fernandes, Minister of Industry to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the Bill to acquire the undertakings of the Hindustan Tractors Limited "The Hindustan Tractors Limited (Acquisition and Transfer of Undertakings) Bill, 1978", by Act of Parliament, recommends, under clauses (1) and (3) of article 117 of the Constitution, the introduction of the said Bill and its consideration by Lok Sabha.

FINANCIAL MEMORANDUM

Sub-clause (2) of clause 5 of the Bill provides that the liability arising in respect of loans advanced by the Central Government, State Government, Banks and Industrial Reconstruction Corporation of India Limited to the Company after the management of the undertakings of the Company had been taken over by the Central Government and the wages, salaries and other dues of the employees of the Company and any debt incurred by the Company, other than those mentioned above, in respect of the period after the management had been so taken over, but, excluding the liabilities specified in Category I of the Schedule to the Bill, shall, on and from the appointed day, be the liability of the Central Government, the State Government of Gujarat or the Government company, as the case may be, and shall be discharged by the Central Government, State Government or the Government company as and when repayment of such loans or amounts, or such wages, salaries and other dues, become due and payable. It is estimated that the expenditure on this account will be of the order of Rs. 3,92,00,000.

2. Clause 8 of the Bill provides for the payment in cash, and in the manner specified in Chapter III of the Bill, an amount of Rs. 1,50,00,000 for vesting in the Central Government, the right, title and interest of Hindustan Tractors Limited in relation to undertakings owned by it.

3. Sub-clause (1) of clause 9 of the Bill provides for payment of further amount in cash, in consideration for the deprivation of the Company of the management of its undertakings, an amount calculated at the rate of Rs. 50,000 per annum, for the period commencing on the date on which the management of the undertakings of the Company was taken over by the Central Government and ending on the 1st April, 1978, that is the appointed day. It is estimated that this amount will be of the order of Rs. 2,50,000.

4. Sub-clause (2) of clause 9 of the Bill provides for payment of simple interest on the amount specified in clause 8 and sub-clause (1) of clause 9 at the rate of four per cent. per annum for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the Central Government to the Commissioner of Payments. It is estimated that the interest/payment in terms of the provisions of the said sub-clause is likely to be about Rs. 50,000 per month.

5. Clause 16 of the Bill provides for the appointment of Commissioner of Payments by the Central Government with adequate staff to assist him for the purpose of disbursing the amount payable to the Company. The salary and allowances of the Commissioner of Payments and his staff and expenditure on office and establishment will be defrayed out of the Consolidated Fund of India. The estimated expenditure on this account is likely to be Rs. 16,000 per month.

6. Clause 26 of the Bill provides for assumption of liabilities to the extent that it is not met up to and including Category III (secured loans) of the Schedule attached to the Bill. It is estimated that the shortfall on this account in payment due to the banks would be of the order of Rs. 1,50,00,000. This will be assumed by the Central Government and transferred immediately to the State Government of Gujarat or the Government company as the case may be.

7. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 34 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill among other things to provide for the time within which, and the manner in which, an intimation referred to in sub-clause (4) of clause 4 of the Bill shall be given.

The matters in respect of which such rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

AVTAR SINGH RIKHY,
Secretary.